APPEAL NO. 022941
FILED JANUARY 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on October 17, 2002. With respect to the sole issue before her, the hearing officer determined that the appellant's (claimant) correct impairment rating (IR) was 10%, as certified by the designated doctor. The claimant appealed on sufficiency grounds, and argued that her IR was alternatively either 47% or 34%, pursuant to reports from her treating doctor. The respondent (carrier) responded, urging that the hearing officer be affirmed, as it was proper to give the designated doctor's certification presumptive weight and the claimant could not and did not rebut the presumption.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's correct IR was 10%, as certified by the designated doctor. Section 408.125 (e) reads, in pertinent part, that, in the event an IR is disputed, the "report of the designated doctor shall have presumptive weight, and the commission shall base the [IR] on that report unless the great weight of the other medical evidence is to the contrary." The claimant's position was that her treating doctor was correct in assigning her a 47%, or in the alternative, 34%, IR because he took into account the injury to her left shoulder. The carrier noted that the designated doctor observed no discernable difference between the claimant's left and right shoulders, using goniometry testing. The hearing officer decided that the claimant failed to "refute the presumptive weight accorded" to the designated doctor's certification.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We do not find so here.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

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Terri Kay Oliver
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Michael B. McShane
Managing Judge
Appeals Panel